

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री भागचन्द, लेखा सदस्य एवं श्री कुल भारत, न्यायिक सदस्य के समक्ष  
BEFORE: SHRI BHAGCHAND, AM AND SHRI KUL BHARAT, JM

आयकर अपील सं./ITA No. 815/JP/2013  
निर्धारण वर्ष / Assessment Year : 2009-10.

The Income Tax Officer, Ward 1(1), Kota.	बनाम Vs.	M/s. Patel Agarwal & Company, through Partner Sh. Subhash Agarwal, 185, Shopping Centre, Kota.
स्थायी लेखा सं./जीआईआर सं./ PAN No.		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by: Shri Prem Prakash Meena (JCIT)  
निर्धारित की ओर से / Assessee by: Shri Satish Ajmera (CA)

सुनवाई की तारीख / Date of Hearing : 08.03.2017.  
घोषणा की तारीख / Date of Pronouncement : 10 /03/2017.

आदेश / ORDER

PER SHRI KUL BHARAT, J.M.

This appeal by the revenue is directed against the order of Id. CIT (A), Kota, dated 28.08.2013 pertaining to assessment year 2009-10. The revenue has raised the following grounds of appeal :-

- “ On the facts and in the circumstances of the case, the Id. CIT (A) has erred in :
- (i) Cancelling the AO's order u/s 147 for assessing the long term capital gains in the status of the firm, ignoring altogether the facts of the relevant registered deed, which explicitly reflected that the plot in question was in possession of the firm upto 26.09.2008 i.e. date of sale ;
  - (ii) Accepting the additional evidence without calling for any remand report from the Assessing Officer ;

(iii) The appellant craves liberty of raise additional ground and to modify/amend the ground of appeal at the time of hearing.”

2. Briefly stated the facts of the case are that the case of the assessee was picked up for scrutiny assessment and the assessment under section 144 read with section 147 of the Income Tax Act, 1961 (hereinafter referred to as the Act) was passed vide order dated 6<sup>th</sup> March, 2013. While framing the assessment, the AO computed the income by invoking the provisions of section 50C of the Act at Rs. 1,17,57,820/-. On further appeal to the Id. CIT (A), the appeal of the assessee was allowed and the assessment order was quashed on the ground that the said notice under section 148 was issued against the non-existing person.

3. Now the revenue is in appeal before this Tribunal.

4. The only effective ground is against cancelling the assessment order under section 147 of the Act.

4.1. The Id. D/R submitted that the Id. CIT (A) was not justified in cancelling the order.

4.2. On the contrary, the Id. Counsel for the assessee submitted that all the evidences were placed before the AO and it was contended that the firm had already been dissolved.

4.3. We have heard rival contentions, perused the material available on record and gone through the orders of the authorities below. We find that the Id. CIT (A) has given the finding of fact by observing as under :-

“ From the perusal of copy of order sheet in the case of Shri Subhash Agarwal, it was seen that the AO asked for details of property sold and purchased with supporting document. The AO recorded on the order

sheet that the property was purchased on 27.07.1996 in co-ownership with Shri Mani Bhai Patel. It was also noted by the AO that copy of allotment letter of RIICO allotting plot in joint name of Shri Mani Bhai Patel and Shri Subhash Agarwal was furnished by A/R of Shri Subhash Agarwal.

From the above, it is clear that the issue of taxing the capital gain in the hands of partner was before AO and he had made detailed enquiries before concluding the assessment in the case of Shri Subhash Agarwal.

Without going into the other aspects of the case, the issue is decided on legal grounds only.

As mentioned by me earlier, the firm ceased to exist on death of one of the partners and, therefore, notice u/s 148 cannot be issued to a non-existing person. Once this fact came to the knowledge of AO, he should have withdrawn the notice and served it on the legal representative of the deceased partner and the sole surviving partner as representative of the dissolved firm.

It is also held that the capital gain arising from the above transaction was disclosed in the hands of the partner and was enquired into by the AO, therefore, reopening of assessment in the case of the firm is merely a change of opinion (it is worth mentioning that the AO of the assessee and its partner, Shri Subhash Agarwal is the same (ITO, Ward 1(1), Kota). Therefore, the reopening of assessment is also held to be invalid.

The very basis, on which the assessment order was passed, did not survive. Therefore, order u/s 147 is cancelled."

The finding of facts as mentioned above, is not controverted by the revenue. Therefore, we do not see any reason to interfere in the order of Id. CIT (A), same is hereby affirmed. The ground of the revenue is rejected.

5. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 10 /03/2017.

Sd/-  
( भागचन्द, )  
(BHAG CHAND )

लेखा सदस्य / Accountant Member

Jaipur

Dated:- 10/03/2017.

d/

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- The ITO Ward 1(1),Kota.
2. The Respondent – M/s. Patel Agarwal & Company, Kota.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 815/JP/2013)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar

